IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1934 of 2005

1. Shri Shrikant Balkirishan Tayade
2. Shri Narayan Annaji Khele
3. Shri Prabhakar Bhivsen Bankar
4. Shri Jayaram c. Salion
5. Smt.Jamanabai H. Bangera
6. Smt.Bharati S. Salion
7. Smt.B.R.Bhoite ...Petitioners

V/s

1. Shri Hemant Padmakar Chavan
2. Shri Madhukar Baburao gajare
3. Shri girish Vasudeeo Upasane ..Respondents

Shri P.N.Joshi for Petitioenrs

Shri S.S.Kulkarni for Respondent no.1

CORAM:S.R.SATHE,J.

DATED:23rd Jan. 2006

ORAL JUDGMENT :

1. By consent heard finally at the admission stage.

2. By this petition under Article 227 of Constitution of India the original judgment debtors have challenged the order passed by the 5th Ad Hoc Additional District Judge, Nasik in Regular Civil Appeal No.316 of 2004 whereby the order passed by the Civil Judge, S.D., Nasik in Regular Darkhast NO.25 of 2002 rejecting the objections raised by the judgment debtors was confirmed.

3. Brief facts giving rise to this petition are as under:

. One Raghunath Joglekar filed Civil Suit bearing No.719 of 1973 against Damodar Shridhar Arbuj i.e. original defendant no.1 and others (including the present petitioners) for possession on the ground that the defendant no.1 has not paid the rent regularly and was defaulter, as contemplated under Section 12(3)(a) of the Bombay Rent Act and original defendant no.1 has illegally subleased the premises to the defendant nos.2 to 13. The said suit was decreed in favour of the plaintiff Raghunath Joglekar. Being aggrieved by the said judgment and order the original defendant no.1 and other defendants preferred civil Appeal No. 78 of 1981 and 181/1981 in the District Court, Nasik. Both the appeals were dismissed on merits on 2-4-1986. Being aggrieved by the same original defendant Ghadge and Patil Transport Pvt. Ltd. filed Writ Petition NO.2473 of 1986. However, the said writ petition was also

dismissed on 30-4-1997. Not only that but Special Leave to appeal filed by the said defendants was also dismissed by the Apex Court. Thereafter present decree holder Hemant Padmakar Chavan purchased the suit property along with right to execute the decree by virtue of registered sale deed dated 28-6-2001.

4. The present decree holder initiated execution proceedings in which notice under Order Rule 22 of Code of Civil Procedure was issued to the judgment debtors as well as to initial decree holder. Raghunath Joglekar, original decree holder filed affidavit and gave his no objection for execution of the decree by the present decree holder. The present petitioners however submitted an application, purported to have been given under Order 21 Rule 97 and Section 151 of Code of Civil Procedure and contended that decree passed by the trial Court is null and void because as per provisions of section 4 of Bombay Rent Act, the said court had no jurisdiction to try the said suit and as such decree passed in the said suit is void. They also contended that the document of sale deed executed in favour of the present decree holder is not legal and valid because the land in question was given to the Raghunath Joglekar by regrant and as such it was necessary to obtain permission from the Collector to execute the sale deed.

5. The application filed by the judgment debtors was strongly opposed by the decree holder contending that

the above mentioned points could have been raised by the judgment debtors in earlier proceedings but as they have not done so, they now cannot challenge the same in the present execution proceedings and at the most they can only point out whether the decree is unexcutable.

6. The judgment debtors adduced evidence in support of their contention. The decree holder did not adduce any evidence. After considering the said evidence and hearing the arguments of both the learned Advocates the learned executing Court came to the conclusion that the objections raised by the defendants original judgment debtors were without any substance. He therefore, rejected those applications and consequently the application filed by the judgment debtors.

7. Being aggrieved by the above mentioned order the judgment debtors preferred Regular Civil appeal; No.316 of 2004 in the District Court, Nasik. The same was also dismissed on merits.

8. Being aggrieved by the above order the petitioners original judgment debtors have filed the present writ petition.

9. In this petition before me, Shri P.N.Joshi, learned Advocate for the Petitioners original judgment debtors has urged only 2 points. Firstly,he submitted that the decree passed by the trial Court is void because

according to him the land in question is a Government land and as such the Rent Court had no jurisdiction to try the said suit. For this proposition he has placed reliance on the provisions of Section 4 of Bombay Rent Act which runs as follows :-

> 4(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf' but it shall apply in respect of premises let, or given or licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of such other.
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> 1(A)x xx

10. As against this Shri S.S.Kulkarni, learned Advocate for the Respondent no.1 submitted that the Petitioners are now not entitled to raise this objection because earlier at no stage of proceedings they had raised this objection.

11. In order to substantiate his argument the learned Advocate for the Petitioners has placed reliance on a case Sarwant Kumar and another V/s Madanlal Aggarwal **(2003) 4 SCC 147**. In that case ex parte decree for ejectment qua commercial tenancy (in Delhi) passed by civil Court taking the view that the tenant after termination of tenancy by service of notice under Section 106 T.P. Act became a statutory tenant and on his death tenancy came to an end but as commercial tenancy is heritable after death of statutory tenant his successor in interest would continue to have estate in the tenanted premises and ejectment decree passed by civil Court, lacking inherent jurisdiction in view of bar contained in Sec. 50 of Delhi Rent Control Act thus being nullity, was not executable and such objection be raised by J.D. even in execution proceedings. So, under such peculiar circumstances the above observations have been made by the Apex Court. However, in the instant case we find that according to the judgment debtors land in question is a Government land and as such the provisions of Bombay Rent Act are not applicable. For this purpose they are trying to rely only on one 7x12 extract in which in other rights column there is entry showing that the land was given initially by way of regrant. However, this by itself is not sufficient to jump to the conclusion that the present Petitioners have proved that the land in question is a Government land. On the contrary, admittedly, for last

several years the land is being used for residential purposes and there is no conclusive evidence to hold that the property in question was the Government property on the date when initially a suit for eviction was filed by the landlord against original tenant defendant no.1 and other sub tenants viz. original defendant nos.2 to 13. Admittedly, at no point of time the original defendants no.1 or other tenants including present Petitioners had contended that the land in question is exempted from the application of the provisions of Bombay Rent Act. So, now it does not lie in their mouth to raise such objection in the execution proceedings. Nor it can be said that the court which was passed the decree has no inherent jurisdiction to try the said suit.

12. While considering this aspect reference can be made to the observations made by the Apex Court in Vasudev Dhanjibhai Modi V/s Rajabhai Abdul Rehman and Ors. -**1970(1) SCC 670** wherein it is held

> "A Court executing a decree cannot go behind the decree, between the parties or their representatives, it must take the decree according to its tenor, and cannot entertain, any objection that the decree was incorrect in law or in facts, until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

. Besides this it must be borne in mind that admittedly the decree passed by the trial Court has been confirmed right upto the Supreme Court and the judgment debtors are now only trying to prolong the handing over of possession, on one or the other pretext. So, I am not inclined to accept the argument advanced by the learned Advocate for the Petitioners in this behalf.

13. A feeble attempt was made on behalf of the Petitioners to show that the sale deed executed by the original decree holder in favour of the present decree holder is not legal and valid because initially the land was given to the original decree holder by way of regrant and as such it was necessary for him to seek permission from the Collector while executing the sale deed. Firstly, it must be noted that there is no sufficient evidence to hold that the land in question is given to Raghunath Joglekar by way of regrant and it has remained accordingly. Moreover, if there is any breach in respect of executing the sale deed in favour of the present decree holder, it is for the Revenue authorities to take proper action. If at all judgment debtors wanted to challenge the said sale deed they should have filed a separate proceedings but on that count they cannot agitate that decree is not executable. We cannot ignore the fact that when such doubt was raised about the said transaction and such notice was issued to the decree holder they filed affidavit and supported the

case of the present judgment debtors. In view of the above, it is very clear that both the courts below have taken into consideration all the facts, circumstances and legal provisions correctly and rightly rejected the objections raised by the judgment debtors.

14. The facts and circumstances do not warrant exercise of special powers under Article 227 of Constitution of India and petition must fail. Hence the writ petition is rejected. No order as to costs.

. At this stage the learned Advocate for the petitioner submits that as his client desires to challenge the order in the higher court, the execution of this order be stayed for eight weeks.

. The learned Advocate for the respondent strongly opposed the same. Having regard to the fact that during the pendency of this writ petition there was order with regard to not executing the decree, the said order to continue for a period of eight weeks from today.

(S.R.SATHE,J.)